APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SEO	CTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12 May 2008
B. 200	DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RCC, Port Isabel - San Benito Navigation District, SWG-8-00408
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Cameron City: Port Isabel Center coordinates of site (lat/long in degree decimal format): Lat. 26.0547° N, Long. 97.2121° E. Universal Transverse Mercator: 14; 2882974N/678856E Name of nearest waterbody: Port Isabel Turning Basin
	Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Laguna Madre Name of watershed or Hydrologic Unit Code (HUC): 12110208 Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 12 May 2008 Field Determination. Date(s):
SEC A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
The	re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: Federal project channel.
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area:

c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters. Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):3

acres.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

acres.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

Non-wetland waters: linear feet: width (ft) and/or

Wetlands:

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Supporting documentation is presented in Section III.F.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Laguna Madre.

Summarize rationale supporting determination: Subject to ebb and flow of the tide; interstate commercial shipping.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions: Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: Relationship with TNW: Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	mical Characteristics: acterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv) I	Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Char	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics: a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics: .
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(C) Wetland Adjacency Determination with Non-TNW: Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:
	(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: dentify specific pollutants, if known:
	(iii)]] [Biological Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	A	All wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

	11 11 121).
1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area: TNWs: linear feet width (ft), Or, 100 acres. Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: .
3. Non-RPWs ⁸ that flow directly or indirectly into TNWs. Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters:
4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide estimates for jurisdictional wetlands in the review area: acres.
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Identify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Pro	ovide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: Wetlands: acres.
F.	Ш	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. □ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR cors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Pro a fin	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such adding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
SEC	CTIC	ON IV: DATA SOURCES.
A. :	and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study:Galveston District List of Navigable Waters of the US. U.S. Geological Survey Hydrologic Atlas: USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name:1:24,000, Port Isabel, TX. USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 2004 TNRIS. or Other (Name & Date):
		Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): May 12, 2008

	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, Trevino Boathouse, Caney Creek, SWG-07-01727
c.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: TX
	Name of watershed or Hydrologic Unit Code (HUC): 12090402 East Matagorda Bay Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: May 9, 2008 Field Determination. Date(s):
SE(A .]	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	"re "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
Γhe	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 1108 square feet linear feet: width (ft) and/or acres Wetlands: 0.00 acres
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM, Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

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A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Caney Creek

Summarize rationale supporting determination: Caney Creek has been determined a TNW by the Galveston District Corps of Engineers.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ⁵ : Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: httfy specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)		logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Cha	ıract	eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)		General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List Characteristics:
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(ii)	Cha	emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii)	Bio	logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	Cha	All	wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis.

		For each wetland, specify the following	ing:		
		Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
		= = = = = = = = = = = = = = = = = = =			
		Summarize overall biologic	cal, chemical and physic	eal functions being performed:	
c.	SIG	NIFICANT NEXUS DETERMINA	TION		
	A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.				
		we connections between the features cussed in the Instructional Guideboo Does the tributary, in combination we TNWs, or to reduce the amount of portion Does the tributary, in combination we other species, such as feeding, nestin Does the tributary, in combination we support downstream foodwebs? Does the tributary, in combination we biological integrity of the TNW?	k. Factors to consider ith its adjacent wetlands ollutants or flood waters ith its adjacent wetlands g, spawning, or rearing ith its adjacent wetlands	include, for example: (if any), have the capacity to carry preaching a TNW? (if any), provide habitat and lifecyclyoung for species that are present in (if any), have the capacity to transfer	e support functions for fish and the TNW?
	Not belo	e: the above list of considerations is ow:	not inclusive and other	r functions observed or known to o	ccur should be documented
	1.	Significant nexus findings for non- findings of presence or absence of sig			
	2.	Significant nexus findings for non- TNWs. Explain findings of presence adjacent wetlands, then go to Section	e or absence of signification		
	3.	Significant nexus findings for wetlar presence or absence of significant ne Section III.D:			
D.		FERMINATIONS OF JURISDICT AT APPLY):	IONAL FINDINGS. T	HE SUBJECT WATERS/WETLA	NDS ARE (CHECK ALL
	1.	TNWs and Adjacent Wetlands. Ch TNWs: 1108 square feet lin Wetlands adjacent to TNWs:			
	2.		taries typically flow year aries have continuous flo	or-round are jurisdictional. Provide days ow "seasonally" (e.g., typically three led at Section III.B. Provide rational	months each year) are

		Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft) Other non-wetland waters: acres Identify type(s) of waters:
	3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres Identify type(s) of waters:
	4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Provide acreage estimates for jurisdictional wetlands in the review area: acres
	5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
		Provide acreage estimates for jurisdictional wetlands in the review area: acres
	6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional wetlands in the review area: acres
	7.	Impoundments of jurisdictional waters. As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
E.	DEC SUC B B B B	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
	ide	ntify water body and summarize rationale supporting determination:
⁹ To	comp	note # 3. Plete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook. Passerting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HO for

review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft) Other non-wetland waters: acres
	Identify type(s) of waters: Wetlands: acres
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
<u>SF</u>	CCTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report
	Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data USGS 8 and 12 digit HUC maps
	Galveston District's Approved List of Navigable Waters U.S. Geological Survey map(s). Cite scale & quad name: Sargent, TX USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date):
	or Other (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):
В.	ADDITIONAL COMMENTS TO SUPPORT JD:
	-8-

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 14 May 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2008-00406 Dredge Location (borrow) (JDI) and

rest	oration area (snanow bay bottom) 102)
C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 14 May 2008 Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
area	waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: Galveston Bay is tidally influenced and used for transport of interstate and foreign commerce. CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	The waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required] 1. Waters of the U.S.
	a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or 5 acres Wetlands: acres
	c. Limits (boundaries) of jurisdiction based on: Pick List Elevation of established OHWM (if known):
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: West Bay

Summarize rationale supporting determination: Galveston Bay is tidally influenced and used for transport of interstate and foreign commerce.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

	Wate	ershed size: Pick List
	Drair	nage area: Pick List
	Aver	age annual rainfall: inches
	Aver	age annual snowfall: inches
(ii)	Phys	ical Characteristics:
	(a)	Relationship with TNW:
	. ,	☐ Tributary flows directly into TNW.
		Tributary flows through Pick List tributaries before entering TNW.
		Project waters are Pick List river miles from TNW.
		Project waters are Pick List river miles from RPW.
		Project waters are Pick List aerial (straight) miles from TNW.
		Project waters are Pick List aerial (straight) miles from RPW.
		Project waters cross or serve as state boundaries. Explain:
		Identify flow route to TNW ⁵ :

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

		Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings: □ Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wack line sediment sorting sediment sorting sediment deposition matted down, bent, or absent leaf litter disturbed or washed away sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by:
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv) Bio	Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
2.	Charac	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain: Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
	(c)	Wetland Adjacency Determination with Non-TNW: ☐ Directly abutting ☐ Discrete wetland hydrologic connection. Explain: ☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
	(d)	Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	Ch	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: entify specific pollutants, if known:
	(iii) Bio	Riparian buffer. Characteristics (type, average width): Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings:
3.	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis.

		For each wetland, specify the followin	g:				
		Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)		
		Summarize overall biologica	al, chemical and physic	al functions being performed:			
C.	SIG	GNIFICANT NEXUS DETERMINAT	ION				
	by a of a wet Cor of w wet trib	significant nexus analysis will assess th any wetlands adjacent to the tributary a TNW. For each of the following situ tlands, has more than a speculative or nsiderations when evaluating significa water in the tributary and its proximit tlands. It is not appropriate to detern butary and its adjacent wetland or bet tside of a floodplain is not solely detern	y to determine if they ations, a significant no insubstantial effect of int nexus include, but ty to a TNW, and the faine significant nexus ween a tributary and	significantly affect the chemical, p exus exists if the tributary, in com n the chemical, physical and/or bio are not limited to the volume, dur functions performed by the tribut based solely on any specific thresh the TNW). Similarly, the fact an a	hysical, and biological integrity bination with all of its adjacent blogical integrity of a TNW. ation, and frequency of the flow ary and all its adjacent old of distance (e.g. between a		
		aw connections between the features of cussed in the Instructional Guidebook Does the tributary, in combination wit TNWs, or to reduce the amount of pol Does the tributary, in combination wit other species, such as feeding, nesting Does the tributary, in combination wit	L. Factors to consider in the hits adjacent wetlands lutants or flood waters the hits adjacent wetlands, spawning, or rearing y	include, for example: (if any), have the capacity to carry preaching a TNW? (if any), provide habitat and lifecyclyoung for species that are present in	oollutants or flood waters to e support functions for fish and the TNW?		
	•	support downstream foodwebs? Does the tributary, in combination wit biological integrity of the TNW?	h its adjacent wetlands	(if any), have other relationships to	the physical, chemical, or		
		Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:					
	1.	Significant nexus findings for non-R findings of presence or absence of sign					
	2.	Significant nexus findings for non-R TNWs. Explain findings of presence adjacent wetlands, then go to Section	or absence of significar				
	3.	Significant nexus findings for wetland presence or absence of significant nex Section III.D:					
D.		TERMINATIONS OF JURISDICTION (IAT APPLY):	ONAL FINDINGS. TE	HE SUBJECT WATERS/WETLA	NDS ARE (CHECK ALL		
	1.	TNWs and Adjacent Wetlands. Che TNWs: linear feet wide Wetlands adjacent to TNWs:	cck all that apply and pr h (ft), Or, 5 acres. acres.	rovide size estimates in review area:			
	2.	RPWs that flow directly or indirectl Tributaries of TNWs where tributation tributary is perennial:		r-round are jurisdictional. Provide d	ata and rationale indicating that		

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft) Other non-wetland waters: acres Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs. Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply): Tributary waters: linear feet width (ft). Other non-wetland waters: acres Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands. Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs. Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SUC IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain: Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: linear feet width (ft) Other non-wetland waters: acres Identify type(s) of waters: Wetlands: acres
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY): If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements. Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce. Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR). Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply): Non-wetland waters (i.e., rivers, streams): linear feet, width (ft). Lakes/ponds: acres. Other non-wetland waters: acres. List type of aquatic resource: Wetlands: acres.
<u>SE</u>	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. Office does not concur with data sheets/delineation report Data sheets prepared by the Corps: Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas: USGS NHD data USGS 8 and 12 digit HUC maps Galveston District's Approved List of Navigable Waters U.S. Geological Survey map(s). Cite scale & quad name: Sea Isle, Texas USDA Natural Resources Conservation Service Soil Survey, Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify):
В.	ADDITIONAL COMMENTS TO SUPPORT JD: Galveston Bay is tidally influenced and used for transport of interstate and

foreign commerce.

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12 May 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-PE-RE, TxDOT Mullins-Reynolds Road at Bessie's Creek, SWG-2007-00470

C.	PROJECT LOCATION AND BACKGROUND INFORMATION: State: Texas County/parish/borough: Fort Bend County City: Simonton Center coordinates of site (lat/long in degree decimal format): Lat. 29.7004° N, Long. 95.9915° W. Universal Transverse Mercator: Zone 15, 3289128.73 Northing, 210562.80 Easting, Name of nearest waterbody: Bessie's Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Brazos River Name of watershed or Hydrologic Unit Code (HUC): 125070104, Lower Brazos Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a
D.	different JD form. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: May 12, 2008
SEC	Field Determination. Date(s): CTION II: SUMMARY OF FINDINGS
	RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Pick List "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew area. [Required] Waters subject to the ebb and flow of the tide. Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В. (CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S. a. Indicate presence of waters of U.S. in review area (check all that apply): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	 Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 168.04 linear feet: 177.5 width (ft) and/or 0.68 acres. Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM. Elevation of established OHWM (if known): 101.57.
	 Non-regulated waters/wetlands (check if applicable):³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

		w

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

I. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

Tributary stream order, if known:

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
		Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:
		Surface flow is: Pick List. Characteristics:
		Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):
		Discontinuous OHWM. Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics In tidal gauges In other (list): Mean High Water Mark indicated by: In survey to available datum; In physical markings; In vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: . ntify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(i	iv) B∶	iological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width):
		ב	Wetland fringe. Characteristics:
			Habitat for:
			☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
2	. <i>C</i>	hara	cteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(hysical Characteristics: a) General Wetland Characteristics:
		`	Properties:
			Wetland size: acres
			Wetland type. Explain: . Wetland quality. Explain: .
			Project wetlands cross or serve as state boundaries. Explain:
			•
		(t	6) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
			Surface flow is: Pick List
			Characteristics: .
			Subsurface flow: Pick List. Explain findings: Dye (or other) test performed:
		(0	wetland Adjacency Determination with Non-TNW:
			☐ Not directly abutting ☐ Discrete wetland hydrologic connection. Explain:
			☐ Ecological connection. Explain: ☐ Separated by berm/barrier. Explain:
		(0	d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW.
			Project waters are Pick List aerial (straight) miles from TNW.
			Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
			•
	(Chemical Characteristics:
		C	Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
		Id	dentify specific pollutants, if known:
		(iii) B	Biological Characteristics. Wetland supports (check all that apply):
		`````` <u> </u>	Riparian buffer. Characteristics (type, average width):
			Vegetation type/percent cover. Explain: .
		L	Habitat for:
			☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings:
			Other environmentally-sensitive species. Explain findings:
			Aquatic/wildlife diversity. Explain findings:
3	3. (	Chara	acteristics of all wetlands adjacent to the tributary (if any)
		A	All wetland(s) being considered in the cumulative analysis: Pick List
		A	Approximately ( ) acres in total are being considered in the cumulative analysis.

		For each wetland, specify the for	ollowing:		
		Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
		Summarize overall biologi	ical, chemical and physica	al functions being performed:	
C.	SIGNI	IFICANT NEXUS DETERMINA	ATION		
	A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.				
		connections between the features sed in the Instructional Guidebo			n the Rapanos Guidance and
	• D	ooes the tributary, in combination w NWs, or to reduce the amount of p	vith its adjacent wetlands	(if any), have the capacity to carry	pollutants or flood waters to
	• D	Poes the tributary, in combination wither species, such as feeding, nesting	vith its adjacent wetlands	(if any), provide habitat and lifecy	
	• D				fer nutrients and organic carbon that
	• D	ooes the tributary, in combination will integrity of the TNW?	vith its adjacent wetlands	(if any), have other relationships to	o the physical, chemical, or
	Note: below	the above list of considerations is :	not inclusive and other	functions observed or known to	occur should be documented
		ignificant nexus findings for non- ndings of presence or absence of si			or indirectly into TNWs. Explain to Section III.D:
	2. <u>S</u>	ignificant nexus findings for non-	-RPW and its adjacent v	vetlands, where the non-RPW flo	ows directly or indirectly into

- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

# D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: linear feet width (ft), Or, acres.  Wetlands adjacent to TNWs: acres.
2.	<ul> <li>RPWs that flow directly or indirectly into TNWs.</li> <li>Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Bessie's Creek flows directly into the Brazos River a TNW, Bessie's Creek is depicted on the topo map with dual solid lines in dicating a continuous flow.</li> <li>Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:</li> </ul>

		Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .
	3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .
	4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
		Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional wetlands in the review area: acres.
	7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  Demonstrate that water is isolated with a nexus to commerce (see E below).
E.	DE SUC	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain:  Other factors. Explain:

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III, D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify water body and summarize rationale supporting determination:	
Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres. Identify type(s) of waters:  Wetlands: acres.	
F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineer Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:  Other: (explain, if not covered above):  Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best profess judgment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.	the
Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where a finding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource: .  Wetlands: acres.	such
SECTION IV: DATA SOURCES.	
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where che and requested, appropriately reference sources below):    Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:   Data sheets prepared/submitted by or on behalf of the applicant/consultant.   Office concurs with data sheets/delineation report.   Office does not concur with data sheets/delineation report.   Data sheets prepared by the Corps:   Corps navigable waters' study:   U.S. Geological Survey Hydrologic Atlas:   USGS NHD data.   USGS 8 and 12 digit HUC maps.   U.S. Geological Survey map(s). Cite scale & quad name:1:24,000 USGS Fulshear Quadrangle.   USDA Natural Resources Conservation Service Soil Survey. Citation:   National wetlands inventory map(s). Cite name:Fulshear Quadrangle.   State/Local wetland inventory map(s):   FEMA/FIRM maps:   100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)   Photographs:   Aerial (Name & Date):   or   Other (Name & Date):   or   Other (Name & Date):   Previous determination(s). File no. and date of response letter:   Applicable/supporting case law:   Applicable/supporting scientific literature:   Other information (please specify):	cked

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

## APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

3	SEC	CTION I: BACKGROUND INFORMATION		
	A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 15 May 2008		
]	В.	DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District,-PE-RE, SWG-2008-00556		
	c.	PROJECT LOCATION AND BACKGROUND INFORMATION:  State: Texas		
]	D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):  Office (Desk) Determination. Date: 15 May 2008  Field Determination. Date(s):		
2	SECTION II: SUMMARY OF FINDINGS A. RHA SECTION 10 DETERMINATION OF JURISDICTION.			
2	Thei area	"re Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review.  [Required]  Waters subject to the ebb and flow of the tide.  Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: Reviewed the Galveston District Navigable Water List.		
J	В. (	CWA SECTION 404 DETERMINATION OF JURISDICTION.		
7	Ther	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required		
		1. Waters of the U.S.  a. Indicate presence of waters of U.S. in review area (check all that apply):  TNWs, including territorial seas  Wetlands adjacent to TNWs Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands		

b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: 126linear feet: 70width (ft) and/or acres

Wetlands:

c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters. Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

-2-

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

#### 1. TNW

Identify TNW: San Jacinto River

Summarize rationale supporting determination: Reviewed Galveston District Navigable Water List.

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

## 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

## (i) General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: Tributary flows directly into TNW. ☐ Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are Pick List aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW⁵: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(D)	Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate):  Average width: feet  Average depth: feet  Average side slopes: Pick List
		Primary tributary substrate composition (check all that apply):  Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
		Tributary has (check all that apply):  Bed and banks  OHWM ⁶ (check all indicators that apply):  clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):  Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):  High Tide Line indicated by: Oil or scum line along shore objects Fine shell or debris deposits (foreshore) Physical markings/characteristics Other (list):  Mean High Water Mark indicated by: Survey to available datum; Physical markings; Vegetation lines/changes in vegetation types.
(iii)	Cha	mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Tibid.

	(iv)	Biological Characteristics. Channel supports (check all that apply):  Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
2.	Cha	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
	(i)	Physical Characteristics:  (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:  Surface flow is: Pick List Characteristics:  Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW:  Directly abutting  Not directly abutting  Discrete wetland hydrologic connection. Explain:  Ecological connection. Explain:  Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	( )	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii)	Biological Characteristics. Wetland supports (check all that apply):  Riparian buffer. Characteristics (type, average width):  Vegetation type/percent cover. Explain:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
3.		racteristics of all wetlands adjacent to the tributary (if any)  All wetland(s) being considered in the cumulative analysis: Pick List  Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

## C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
  other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

	,
1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: 126linear feet 70width (ft), Or, acres.  Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres  Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  Demonstrate that water is isolated with a nexus to commerce (see E below).
	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, EGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY OCH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain:  Other factors. Explain:  entify water body and summarize rationale supporting determination:

E.

 ⁸ See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres Identify type(s) of waters:  Wetlands: acres
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:  Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
<u>SE</u>	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):  Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant.  Office concurs with data sheets/delineation report.  Office does not concur with data sheets/delineation report  Data sheets prepared by the Corps:  Corps navigable waters' study:  U.S. Geological Survey Hydrologic Atlas:  USGS NHD data  USGS 8 and 12 digit HUC maps  Galveston District's Approved List of Navigable Waters  U.S. Geological Survey map(s). Cite scale & quad name: Scale - 1:32,842; Highlands, Texas  USDA Natural Resources Conservation Service Soil Survey. Citation:  National wetlands inventory map(s). Cite name: Highlands, Texas  State/Local wetland inventory map(s):  FEMA/FIRM maps:  100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)  Photographs: Aerial (Name & Date): 2004  or Other (Name & Date):  Previous determination(s). File no. and date of response letter:  Applicable/supporting case law:  Applicable/supporting scientific literature:  Other information (please specify):
υ.	additional comments to sufferi (d):

## APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

	CTION I: BACKGROUND INFORMATION
A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): Well, pad and pipelines
B. C.	PROJECT LOCATION AND BACKGROUND INFORMATION:  State: Texas County/Parish: Chambers City:  Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. 29.5874° N, Long94.9473° W;  Universal Transverse Mercator: UTM: 15, 3274477 N., 311395 E.,NAD: 27  Name of nearest water body: Galveston Bay  Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Galveston Bay  Name of watershed or Hydrologic Unit Code (HUC): 12040204  Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):  Office (Desk) Determination. Date: 13 May 2008  Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required]  Waters subject to the ebb and flow of the tide.  Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: Galveston Bay is tidally influenced and used for transport of interstate and foreign commerce.
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S.  a. Indicate presence of waters of U.S. in review area (check all that apply):  TNWs, including territorial seas  Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area:  Non-wetland waters: 5,760 linear feet: width (ft) and/or acres  Wetlands: acres
	c. Limits (boundaries) of jurisdiction based on: Pick List Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

## A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

#### 1. TNW

Identify TNW: Galveston Bay

Summarize rationale supporting determination: Galveston Bay is tidally influenced and used for transport of interstate and foreign commerce

## 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

## 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

	watershed size: Pick List
	Drainage area: Pick List
	Average annual rainfall: inches
	Average annual snowfall: inches
(ii)	Physical Characteristics:
	(a) Relationship with TNW:
	☐ Tributary flows directly into TNW.
	Tributary flows through <b>Pick List</b> tributaries before entering TNW.
	Project waters are <b>PickList</b> river miles from TNW.
	Project waters are <b>Pick List</b> river miles from RPW.
	Project waters are <b>Pick List</b> aerial (straight) miles from TNW.
	Project waters are Pick List aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain:
	Identify flow route to TNW ⁵ :

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

		Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply):  Tributary is:
		Tributary properties with respect to top of bank (estimate):  Average width: feet  Average depth: feet  Average side slopes: Pick List
		Primary tributary substrate composition (check all that apply):  Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope): %
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
		Tributary has (check all that apply):  Bed and banks  OHWM ⁶ (check all indicators that apply):  clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting secour multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):  High Tide Line indicated by:  oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list):  Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: httify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv) E [ [ [	Biological Characteristics. Channel supports (check all that apply):  Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
2.	Char	acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics:  (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
	(	b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:  Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
	(	Wetland Adjacency Determination with Non-TNW:   Directly abutting   Not directly abutting   Discrete wetland hydrologic connection. Explain:   Ecological connection. Explain:   Separated by berm/barrier. Explain:
	(	d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	(	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: dentify specific pollutants, if known:
	! (iii) ] ] ]	Biological Characteristics. Wetland supports (check all that apply):  Riparian buffer. Characteristics (type, average width):  Vegetation type/percent cover. Explain:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
3.	A	Acteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> Size (in acres) <u>Directly abuts? (Y/N)</u>

Summarize overall biological, chemical and physical functions being performed:

#### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Size (in acres)

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: 5,760 linear feet width (ft), Or, acres.  Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

		Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres Identify type(s) of waters:
	3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres Identify type(s) of waters:
	4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
		Provide acreage estimates for jurisdictional wetlands in the review area: acres
	5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
		Provide acreage estimates for jurisdictional wetlands in the review area: acres
	6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Provide estimates for jurisdictional wetlands in the review area: acres
	7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  Demonstrate that water is isolated with a nexus to commerce (see E below).
E.	SUC SUC III	PLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain:  Other factors. Explain:
	Ide	ntify water body and summarize rationale supporting determination:

 ⁸See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres Identify type(s) of waters:  Wetlands: acres
F.	NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
	Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
SE	CTION IV: DATA SOURCES.
A.	SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):  Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:  Data sheets prepared/submitted by or on behalf of the applicant/consultant.  Office concurs with data sheets/delineation report.  Office does not concur with data sheets/delineation report  Data sheets prepared by the Corps:  Corps navigable waters' study:  U.S. Geological Survey Hydrologic Atlas:  USGS NHD data  USGS 8 and 12 digit HUC maps  Galveston District's Approved List of Navigable Waters  U.S. Geological Survey map(s). Cite scale & quad name: 1:63,439 Bacliff, Texas  USDA Natural Resources Conservation Service Soil Survey. Citation:  National wetlands inventory map(s). Cite name:  State/Local wetland inventory map(s):  FEMA/FIRM maps:  100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)  Photographs:  Aerial (Name & Date):  Previous determination(s). File no. and date of response letter:  Applicable/supporting case law:  Applicable/supporting scientific literature:  Other information (please specify):
	ADDITIONAL COMMENTS TO SUPPORT JD: Galveston Bay is tidally influenced and used for transport of interstate and foreign merce.

## APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I:	BACKGROUND	<b>INFORMATION</b>
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Α.	REPORT COMPLETION DA	TE FOR APPROVED	<b>JURISDICTIONAL</b>	<b>DETERMINATION</b>	(JD): Ma	y 14, 2008
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B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District,-Roder Boathouse, Lake Livingston, SWG-2007-00611

C.	PROJECT LOCATION AND BACKGROUND INFORMATION:  State: Texas
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):  Office (Desk) Determination. Date: May 14, 2008  Field Determination. Date(s):
SE A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	"navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required]  Waters subject to the ebb and flow of the tide.  Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:
В.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S.  a. Indicate presence of waters of U.S. in review area (check all that apply):  TNWs, including territorial seas  Wetlands adjacent to TNWs  Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs  Non-RPWs that flow directly or indirectly into TNWs  Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  Impoundments of jurisdictional waters  Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area:  Non-wetland waters: 2132 square feet linear feet: width (ft) and/or acres  Wetlands: acres
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM.  Elevation of established OHWM (if known):
	2. Non-regulated waters/wetlands (check if applicable): ³

Boxes checked below shall be supported by completing the appropriate sections in Section III below.
 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

2	Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdic Explain:	ctional

## A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

## 1. TNW

Identify TNW: Lake Livingston

Summarize rationale supporting determination: Lake Livingston is a TNW and is used for interstate commerce.

## 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

## 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

## General Area Conditions: Watershed size: Pick List Pick List Drainage area: Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. ☐ Tributary flows through **Pick List** tributaries before entering TNW. Project waters are **Pick List** river miles from TNW. Project waters are **Pick List** river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

		Identify flow route to TNW ³ :  Tributary stream order, if known:
	(b)	General Tributary Characteristics (check all that apply):  Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain:
		Tributary properties with respect to top of bank (estimate):  Average width: feet  Average depth: feet  Average side slopes: Pick List
		Primary tributary substrate composition (check all that apply):  Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Pick List Tributary gradient (approximate average slope):
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume: Surface flow is: Pick List. Characteristics: Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
		Tributary has (check all that apply):  Bed and banks  OHWM ⁶ (check all indicators that apply):  clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list):  Discontinuous OHWM. ⁷ Explain:
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):  High Tide Line indicated by:  oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list):  Mean High Water Mark indicated by: physical markings; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: ntify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	Biological Characteristics. Channel supports (check all that apply):  Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
2.	Char	racteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		Physical Characteristics:  (a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
		(b) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
		(c) Wetland Adjacency Determination with Non-TNW:  Directly abutting  Not directly abutting  Discrete wetland hydrologic connection. Explain:  Ecological connection. Explain:  Separated by berm/barrier. Explain:
		(d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.
	, ,	Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Identify specific pollutants, if known:
	(iii)	Biological Characteristics. Wetland supports (check all that apply):  Riparian buffer. Characteristics (type, average width):  Vegetation type/percent cover. Explain:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
3.		racteristics of all wetlands adjacent to the tributary (if any)  All wetland(s) being considered in the cumulative analysis: Pick List  Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

#### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

# D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
	<ul><li>☑ TNWs: 2132 square feet linear feet width (ft), Or, acres.</li><li>☑ Wetlands adjacent to TNWs: acres.</li></ul>
2.	RPWs that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
	Tibutaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres Identify type(s) of waters:
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres Identify type(s) of waters:
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: acres
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional wetlands in the review area: acres
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).
DE SU D	OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 which are or could be used by interstate or foreign travelers for recreational or other purposes. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. which are or could be used for industrial purposes by industries in interstate commerce. Interstate isolated waters. Explain:  Other factors. Explain:
Ide	ntify water body and summarize rationale supporting determination:

E.

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		ride estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft)  Other non-wetland waters: acres  Identify type(s) of waters:  Wetlands: acres
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Other: (explain, if not covered above):
	fact	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
	a fir	vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
	SUPI	N IV: DATA SOURCES.  PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below):
		Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:  Data sheets prepared/submitted by or on behalf of the applicant/consultant.  Office concurs with data sheets/delineation report.  Office does not concur with data sheets/delineation report  Data sheets prepared by the Corps:  Corps navigable waters' study: Galveston District List of Navigable Waters
		U.S. Geological Survey Hydrologic Atlas:  USGS NHD data  USGS 8 and 12 digit HUC maps Galveston District's Approved List of Navigable Waters  U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Blanchard, Texas
		USDA Natural Resources Conservation Service Soil Survey. Citation:  National wetlands inventory map(s). Cite name:  State/Local wetland inventory map(s):  FEMA/FIRM maps:  100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)  Photographs: Aerial (Name & Date):
		or  Other (Name & Date):  Previous determination(s). File no. and date of response letter:  Applicable/supporting case law:  Applicable/supporting scientific literature:  Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Lake Livingston is a TNW subject to Sec 10 of RHA.

## APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

## SECTION I: BACKGROUND INFORMATION

A. R	EPORT COMPI	ETION DATE FOR	APPROVED	LIURISDICTIONAL	L DETERMINATION (J	JD): 12/14/2003
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B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWG-Shoreline Southeast-SWG-2007-01686

C.	PROJECT LOCATION AND BACKGROUND INFORMATION:  State: Louisiana County/parish/borough: Cameron City: Open waters of Sabine Lake  Center coordinates of site (lat/long in degree decimal format): Lat. 29° N, Long93° W.  Universal Transverse Mercator: 418446E 3304525N  Name of nearest waterbody: Sabine Lake  Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Sabine Lake.
	Name of watershed or Hydrologic Unit Code (HUC): 12040201 (Sabine Lake)  Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):  Office (Desk) Determination. Date: 12/13/2007  Field Determination. Date(s):
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	"navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review.  [Required]  Waters subject to the ebb and flow of the tide.  Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain: Sabine Lake.
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S.  a. Indicate presence of waters of U.S. in review area (check all that apply):  TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands
	b. Identify (estimate) size of waters of the U.S. in the review area:  Non-wetland waters: 0.001linear feet: width (ft) and/or acres.  Wetlands: acres.
	c. Limits (boundaries) of jurisdiction based on: Pick List

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):3

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Sabine Lake.

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

## 1. Characteristics of non-TNWs that flow directly or indirectly into TNW

**General Area Conditions:** Watershed size: Pick List Drainage area: Pick List Average annual rainfall: inches Average annual snowfall: inches (ii) Physical Characteristics: (a) Relationship with TNW: ☐ Tributary flows directly into TNW. Tributary flows through Pick List tributaries before entering TNW. Project waters are Pick List river miles from TNW. Project waters are Pick List river miles from RPW. Project waters are Pick List aerial (straight) miles from TNW. Project waters are **Pick List** aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(0)	Tributary is:  Natural Artificial (man-made). Explain: Manipulated (man-altered). Expl	ain:
		Tributary properties with respect to top of bank (estimate Average width: feet Average depth: feet Average side slopes: Pick List.	<del>2</del> ):
		Primary tributary substrate composition (check all that ap  Silts Sands Cobbles Gravel Bedrock Vegetation. Type/% cor Other. Explain:	☐ Concrete ☐ Muck
		Tributary condition/stability [e.g., highly eroding, slough Presence of run/riffle/pool complexes. Explain: . Tributary geometry: Pick List Tributary gradient (approximate average slope): %	ng banks]. Explain:
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/ye Describe flow regime: Other information on duration and volume:	ear: <b>Pick List</b>
		Surface flow is: Pick List. Characteristics:	
		Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:	
		Tributary has (check all that apply):  Bed and banks  OHWM ⁶ (check all indicators that apply):  clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):	the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
		☐ Discontinuous OHWM. ⁷ Explain: .	
		If factors other than the OHWM were used to determine he high Tide Line indicated by:    High Tide Line indicated by:   oil or scum line along shore objects   fine shell or debris deposits (foreshore)   physical markings/characteristics   tidal gauges   other (list):	ateral extent of CWA jurisdiction (check all that apply): an High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types.
(iii)	Cha	hemical Characteristics: naracterize tributary (e.g., water color is clear, discolored, oil Explain: entify specific pollutants, if known:	y film; water quality; general watershed characteristics, etc.)

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv)	iological Characteristics. Channel supports (check all that apply):    Riparian corridor. Characteristics (type, average width):   Wetland fringe. Characteristics:   Habitat for:   Federally Listed species. Explain findings:   Fish/spawn areas. Explain findings:   Other environmentally-sensitive species. Explain findings:   Aquatic/wildlife diversity. Explain findings:	
2.	Cha	ecteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW	
	(i)	hysical Characteristics:  a) General Wetland Characteristics: Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:	
		o) General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:	
		Surface flow is: Pick List Characteristics:	
		Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:	
		Wetland Adjacency Determination with Non-TNW:  Directly abutting Not directly abutting Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain:	
		Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from TNW. Flow is from: Pick List. Estimate approximate location of wetland as within the Pick List floodplain.	
	(ii)	Chemical Characteristics:  characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general waters characteristics; etc.). Explain:  dentify specific pollutants, if known:	shed
	(iii)	iological Characteristics. Wetland supports (check all that apply):  Riparian buffer. Characteristics (type, average width):  Vegetation type/percent cover. Explain:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:	
3.	Cha	cteristics of all wetlands adjacent to the tributary (if any)  Il wetland(s) being considered in the cumulative analysis: Pick List  pproximately ( ) acres in total are being considered in the cumulative analysis.	

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u> <u>Directly abuts? (Y/N)</u> <u>Size (in acres)</u>

Summarize overall biological, chemical and physical functions being performed:

## C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and
  other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D.	DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL
	THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: 0.01linear feet width (ft), Or, acres.  Wetlands adjacent to TNWs: acres.
2.	RPWs that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .	
3.	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.	a
	Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .	
4.	<ul> <li>Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.</li> <li>Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.</li> <li>Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:</li> <li>Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributaries seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:</li> </ul>	ry i
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.	
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting the conclusion is provided at Section III.C.	
	Provide acreage estimates for jurisdictional wetlands in the review area: acres.	
6.	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.	and
	Provide estimates for jurisdictional wetlands in the review area: acres.	
7.	As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  Demonstrate that water is isolated with a nexus to commerce (see E below).	
DE SU IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII	ATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, RADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY HWATERS (CHECK ALL THAT APPLY): 10 hich are or could be used by interstate or foreign travelers for recreational or other purposes. om which fish or shellfish are or could be taken and sold in interstate or foreign commerce. hich are or could be used for industrial purposes by industries in interstate commerce. terstate isolated waters. Explain: . ther factors. Explain:	
Ide	ify water body and summarize rationale supporting determination:	

E.

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

		Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters:  Wetlands: acres.
F.		N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:  Other: (explain, if not covered above):
	facto judg	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource: .  Wetlands: acres.
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
	SUPI and	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked requested, appropriately reference sources below):  Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:  Data sheets prepared/submitted by or on behalf of the applicant/consultant.  Office concurs with data sheets/delineation report.  Office does not concur with data sheets/delineation report.
	⊒ ⊠ □	Data sheets prepared by the Corps:  Corps navigable waters' study:  U.S. Geological Survey Hydrologic Atlas:  USGS NHD data.  USGS 8 and 12 digit HUC maps.
		U.S. Geological Survey map(s). Cite scale & quad name: USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): or Other (Name & Date):
		Previous determination(s). File no. and date of response letter:  Applicable/supporting case law:  Applicable/supporting scientific literature:  Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

# APPROVED JURISDICTIONAL DETERMINATION FORM

	U.S. Army Corps of Engineers
Thi	s form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.
SE	CTION I: BACKGROUND INFORMATION
A.	REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12 May 2008
B.	DISTRICT OFFICE, FILE NAME, AND NUMBER:SWG-2008-00544
C.	State: Texas County/parish/borough: Galveston City: Galveston Center coordinates of site (lat/long in degree decimal format): Lat. 29.4° N, Long. 95.04° W.  Universal Transverse Mercator: 15 301550E 32255217N (NAD 27)
	Name of nearest waterbody: West Bay  Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: West Bay  Name of watershed or Hydrologic Unit Code (HUC): 12040204  Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  Check if other sites (e.g., offsite mitigation sites, disposal sites, etc) are associated with this action and are recorded on a different JD form.
D.	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):  Office (Desk) Determination. Date: 12 May2008  Field Determination. Date(s):
SEG A.	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	ere Are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review a. [Required]  Waters subject to the ebb and flow of the tide.  Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce Explain:
B.	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	ere Are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]
	1. Waters of the U.S.  a. Indicate presence of waters of U.S. in review area (check all that apply):   TNWs, including territorial seas  Wetlands adjacent to TNWs  Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs  Non-RPWs that flow directly or indirectly into TNWs  Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

#### b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: linear feet: width (ft) and/or .02 acres.

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Isolated (interstate or intrastate) waters, including isolated wetlands

Wetlands: acres.

## c. Limits (boundaries) of jurisdiction based on: Pick List

Impoundments of jurisdictional waters

Elevation of established OHWM (if known):

## Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

3 Supporting documentation is presented in Section III.F.

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Carancahua Bay.

Summarize rationale supporting determination: Projec is located in the bay.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i)	General	l Area	Condi	tions	

Watershed size: Pick List
Drainage area: Pick List
Average annual rainfall: inches
Average annual snowfall: inches

## (ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW5:

Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	(b)	General Tributary Characteristics (check all that apply):  Tributary is:  Natural	
		Tributary properties with respect to top of bank (estimate):  Average width: feet  Average depth: feet  Average side slopes: Pick List.	
		Primary tributary substrate composition (check all that apply):  Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain:	
		Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:  Presence of run/riffle/pool complexes. Explain:  Tributary geometry: Pick List  Tributary gradient (approximate average slope): %	
	(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: Other information on duration and volume:	
		Surface flow is: Pick List. Characteristics:	
		Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:	
		Tributary has (check all that apply):  Bed and banks  OHWM ⁶ (check all indicators that apply):  clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list):  Discontinuous OHWM. Explain:	
		If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):    High Tide Line indicated by:	
(iii)	Cha	emical Characteristics:  aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, e  Explain:  tify specific pollutants, if known:	etc.).

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

	(iv) Bio	Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Since the control of the control o
2.	Charac	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
		ysical Characteristics:  General Wetland Characteristics:  Properties:  Wetland size: acres  Wetland type. Explain:  Wetland quality. Explain:  Project wetlands cross or serve as state boundaries. Explain:
	(b)	General Flow Relationship with Non-TNW: Flow is: Pick List. Explain:
		Surface flow is: Pick List Characteristics:
		Subsurface flow: Pick List. Explain findings:  Dye (or other) test performed:
	(c)	Wetland Adjacency Determination with Non-TNW:  Directly abutting  Not directly abutting  Discrete wetland hydrologic connection. Explain:  Ecological connection. Explain:  Separated by berm/barrier. Explain:
	(d)	Proximity (Relationship) to TNW  Project wetlands are Pick List river miles from TNW.  Project waters are Pick List aerial (straight) miles from TNW.  Flow is from: Pick List.  Estimate approximate location of wetland as within the Pick List floodplain.
	Ch	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: ntify specific pollutants, if known:
	(iii) Bid	Riparian buffer. Characteristics (type, average width):  Vegetation type/percent cover. Explain:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:
3.	All	teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List proximately ( ) acres in total are being considered in the cumulative analysis.

	For each wetland, specify the following:				
		<u>Directly abuts? (Y/N)</u>	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
		Summarize overall biologica	al, chemical and phys	ical functions being performed:	
C.	SIG	GNIFICANT NEXUS DETERMINAT	ION		
	by a of a wet Cor of v wet trib	ignificant nexus analysis will assess the any wetlands adjacent to the tributary TNW. For each of the following situtlands, has more than a speculative or nesiderations when evaluating significations water in the tributary and its proximital tributary and its is not appropriate to determinate and its adjacent wetland or betailed of a floodplain is not solely determinated.	y to determine if the ations, a significant insubstantial effect int nexus include, buy to a TNW, and the ine significant nexuween a tributary an	y significantly affect the chemical, p nexus exists if the tributary, in coml on the chemical, physical and/or bio it are not limited to the volume, dur- e functions performed by the tributa s based solely on any specific thresh d the TNW). Similarly, the fact an a	hysical, and biological integrity bination with all of its adjacent blogical integrity of a TNW. ation, and frequency of the flow ary and all its adjacent old of distance (e.g. between a
		aw connections between the features decussed in the Instructional Guidebook Does the tributary, in combination with TNWs, or to reduce the amount of poll Does the tributary, in combination with other species, such as feeding, nesting, Does the tributary, in combination with support downstream foodwebs? Does the tributary, in combination with biological integrity of the TNW?	. Factors to consider the its adjacent wetland lutants or flood water the its adjacent wetland to spawning, or rearing the its adjacent wetland	r include, for example: Is (if any), have the capacity to carry p s reaching a TNW? Is (if any), provide habitat and lifecycl g young for species that are present in t s (if any), have the capacity to transfe	ollutants or flood waters to e support functions for fish and the TNW? r nutrients and organic carbon that
	Not belo	te: the above list of considerations is now:	ot inclusive and oth	er functions observed or known to o	ccur should be documented
	1.	Significant nexus findings for non-R findings of presence or absence of sign			
	2.	Significant nexus findings for non-R TNWs. Explain findings of presence of adjacent wetlands, then go to Section I	or absence of signific	t wetlands, where the non-RPW flow ant nexus below, based on the tributary	ys directly or indirectly into y in combination with all of its
	3.	Significant nexus findings for wetlan presence or absence of significant next Section III.D:			
D.		TERMINATIONS OF JURISDICTIC AT APPLY):	ONAL FINDINGS. 7	THE SUBJECT WATERS/WETLA	NDS ARE (CHECK ALL
	1.	TNWs and Adjacent Wetlands. Che TNWs: linear feet widt Wetlands adjacent to TNWs: acres	h (ft), Or, .02 acres.	provide size estimates in review area:	
	2.	RPWs that flow directly or indirectly  Tributaries of TNWs where tributa		ear-round are jurisdictional. Provide da	ata and rationale indicating that

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

tributary is perennial:

seasonally:

	**
wind from the control of the control	H WATERS (CHECK ALL THAT APPLY): 10 hich are or could be used by interstate or foreign travelers for recreational or other purposes. om which fish or shellfish are or could be taken and sold in interstate or foreign commerce. hich are or could be used for industrial purposes by industries in interstate commerce. iterstate isolated waters. Explain: ther factors. Explain: ify water body and summarize rationale supporting determination:
DEGI	ATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, RADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY
	mpoundments of jurisdictional waters.  As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  Demonstrate that water is isolated with a nexus to commerce (see E below).
	Provide estimates for jurisdictional wetlands in the review area: acres.
6. <u>V</u>	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
P	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
P	Provide acreage estimates for jurisdictional wetlands in the review area: acres.
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
P	Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters:
	Non-RPWs ⁸ that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .

 ⁸See Footnote # 3.
 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 10 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .  Wetlands: acres.
F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:  Other: (explain, if not covered above):
Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:  Wetlands: acres.
Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where su a finding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource: .  Wetlands: acres.
SECTION IV: DATA SOURCES.
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checke and requested, appropriately reference sources below):    Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:   Data sheets prepared/submitted by or on behalf of the applicant/consultant.   Office concurs with data sheets/delineation report.   Office does not concur with data sheets/delineation report.   Data sheets prepared by the Corps:   Corps navigable waters' study:   U.S. Geological Survey Hydrologic Atlas:   USGN NHD data.   USGS NHD data.   USGS NHD data.   USGA Natural Resources Conservation Service Soil Survey. Citation:   National wetlands inventory map(s). Cite name:   State/Local wetland inventory map(s). Cite name:   State/Local wetland inventory map(s):   FEMA/FIRM maps:   100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)   Photographs:   Aerial (Name & Date):   or   Other (Name & Date):   Previous determination(s). File no. and date of response letter:   Applicable/supporting scientific literature:   Other information (please specify):
B. ADDITIONAL COMMENTS TO SUPPORT JD: